IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ICONTROL NETWORKS, INC., a Delaware corporation, **Plaintiff,** **v.** **ZONOFF INC., a Delaware corporation,** **Defendant.**	**CIVIL ACTION** **NO. 1:14-CV-1199-GMS**

MEMORANDUM IN SUPPORT OF ZONOFF INC.'S MOTION TO DISMISS AND FOR A MORE DEFINITE STATEMENT

DATED: November 7, 2014

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I. NATURE AND STAGE OF THE PROCEEDINGS

This is a patent infringement action in which plaintiff iControl Networks, Inc. ("iControl") has filed a shotgun-style complaint against Zonoff Inc. ("Zonoff"), alleging direct and indirect infringement of six patents: U.S. Patent No. 6,624,750 ("the '750 patent"), entitled "Wireless Home Fire and Security System"; U.S. Patent No. 7,262,690 ("the '690 patent"), entitled "Method and System For Monitoring Events"; U.S. Patent No. 8,335,842 ("the '842 patent"), entitled "Premises Management Networking"; U.S. Patent No. 8,612,591 ("the '591 patent"), entitled "Security System With Networked Touchscreen"; U.S. Patent No. 8,478,871 ("the '871 patent"), entitled "Gateway Registry Methods and Systems"; and U.S. Patent No. 8,638,211 ("the '211 patent"), entitled "Configurable Controller and Interface for Home SMA, Phone and Multimedia." The six patents-in-suit have a total of **221 claims**, but iControl has not identified ***any specific claim*** that it contends is infringed.

The '750 patent has a total of **31 claims**. Independent Claim 1, dependent Claims 2-6, independent Claim 27, and dependent Claims 28-31 are method claims for automatically programming a wireless sense and/or control system. Independent Claim 7 and dependent Claims 8-26 cover certain low power sense and/or control systems themselves. [D.I. 1-1 at PageID 38-40].

The '690 patent has a total of **35 claims**. Independent Claim 1 and dependent Claims 2-12 cover certain monitoring and control systems. Claim 13 and dependent Claims 14-19 cover certain control units for use in the monitoring and control systems of Claim 1. Claim 20 and dependent Claim 21 cover certain automatic monitoring stations for use in the monitoring and claim system of Claim 1. Independent Claim 22 and dependent Claims 23-26 are method claims for monitoring a site equipped with one or more detection devices. Independent Claim 26 and dependent Claims 27-35 cover certain alarm control units for use in combination with one or more pre-existing alarm systems. [*Id.* at PageID 58-60].

The '842 patent has a total of **25 claims**. Independent Claim 1 and dependent Claims 2-13 are method claims for premises management networking of a premises management system. Independent Claim 14 and dependent Claims 15-25 cover certain premises management networking gateways of a premises management system. [*Id.* at PageID 95-96].

The '591 patent has a total of **58 claims**. Independent Claim 1 and dependent Claims 2-55 and Independent Claims 56-58 cover certain security systems with networked touchscreens. [*Id.* at PageID 144-146].

The '871 patent has a total of **43 claims**. Independent Claim 1 and dependent Claims 2-15 cover certain gateway devices for managing a set of local management devices at a location. Independent Claim 15 and dependent Claims 16-32 cover certain systems for networks at a plurality of locations. Independent Claim 33 and dependent Claims 34-43 are method claims for operating certain gateway devices in a control network. [*Id.* at PageID 166-168].

The '211 patent has a total of **33 claims**. Independent Claim 1 and dependent Claim 2-15 cover certain devises and apparatuses involving a single platform for controller functionality for each of security and monitoring and automatic and providing a capacity to function as a bidirectional Internet gateway. Independent Claim 25 and dependent Claim 26-33 cover methods performed by a security, monitoring and automation controller. [*Id.* at PageID 190-192].

iControl has made no allegation in its Complaint either that it marks the systems and equipment that it and/or its licensees sell with the numbers of any of the patents-in-suit or that it ever gave Zonoff written pre-suit notice of the alleged infringement of any of the patents-in-suit.

II. SUMMARY OF THE ARGUMENT

iControl's Complaint which provides no facts supporting the claims of indirect infringement and joint infringement should be dismissed for failure to satisfy the pleading requirements as interpreted by the United States Supreme Court and the Federal Circuit. Additionally, since iControl has not pleaded facts showing that it complied with the requirements of 35 U.S.C. § 287, its claim for damages should be stricken. Finally, even as to the allegations of undivided direct infringement, iControl should be required to file a more definite complaint that identifies which of the 221 claims of the six patents-in-suit are being asserted against Zonoff. Requiring iControl to do so will impose no new burden on iControl and will permit Zonoff to respond intelligently to the Complaint without the undue burden of wading through and analyzing all 221 claims.

III. STATEMENT OF THE PERTINENT FACTS

A. iControl's Allegations Of Infringement

For each of the six separate patents, iControl makes the following boilerplate allegations:

- "Icontrol is informed and believes, and thereon alleges, that Zonoff has infringed and continues to infringe the '[ ] patent in this district and elsewhere, by making, using, offering for sale, and/or selling at least the Accused Products within the United States in violation of 35 U.S.C. § 271(a)."
- "Zonoff has and continues to actively induce third parties (*e.g.*, retailers, service providers, consumer electronics OEMs, and system integrators) to directly infringe—through the use of at least the Accused products—one or more claims of the '[ ] patent.

Zonoff is, therefore, liable for indirect infringement of the '[ ] patent under 35 U.S.C. § 271(b)."

- "Zonoff has and continues to sell and/or offer to sell components– including at least the Accused products—which constitute a material part of the '[ ] patent and lack any substantial non-infringing use. Zonoff is, therefore, liable for indirect infringement of the '[ ] patent under 35 U.S.C. § 271(c)."
- "Icontrol is informed and believes, and thereon alleges, that unless enjoined by this Court, Zonoff will continue to infringe the '[ ] patent, and Icontrol will continue to suffer irreparable harm for which there is no adequate remedy at law."

(D.I. 1 at ¶¶ 21-24, 28-31, 35-38, 42-45, 49-52, 56-59).

IV. ARGUMENT

A. Applicable Legal Principles

1. General pleading requirements.

To meet minimal pleading requirements, a plaintiff must plead a "short and plain statement of the claim showing the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). As the Supreme Court has reiterated, compliance with Rule 8(a) "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Claims should be dismissed unless the complaint contains "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 570).

After the Supreme Court's decision in *Twombly*, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Stated differently, "a complaint must do more than allege the plaintiff's entitlement to relief. A complaint has to 'show' such an entitlement with its facts." *Fowler v. UPMC Shadyside*, 578 F.3d 203, 211 (3d Cir. 2009). "[W]here the well-pleaded facts do not permit the court to infer more than a mere possibility of misconduct, the complaint has alleged – but it has not shown – that the pleader is entitled to relief." *Thornton v. Chandler*, No. 11-860-GMS, 2012 WL 113005, at *2 (D. Del. Jan. 12, 2012) (quoting *Iqbal*, 129 S. Ct. at 1949, and Fed. R. Civ. P. 8(a)(2)).

To determine the sufficiency of a complaint to state a claim, the Court should first identify and disregard those allegations that are mere legal conclusions. *See Iqbal*, 556 U.S. at 679 ("While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations."). Next, the Court should accept as true any well-pleaded factual allegations, and then determine whether those facts plausibly give a right to relief. *See id.* While doing so, the Court need not accept as true mere legal conclusions that are couched as factual allegations. *See id.* at 678 (noting "'naked assertion[s]' devoid of 'further factual enhancement'" will not suffice to overcome a motion to dismiss) (internal citations omitted).

2. Pleading requirements as to indirect infringement.

There are no forms in the Federal Rules of Civil Procedure relating to indirect patent infringement claims. As a result, the Federal Circuit has stated that the "general principles of *Twombly* and *Iqbal* must be applied to indirect infringement claims." *See In re Bill of Lading*

Transmission and Processing Sys. Patent Litig., 681 F.3d 1323, 1337 (Fed. Cir. 2012) (internal quotation marks and citations omitted).

Under 35 U.S.C. § 271(b), "[w]hoever actively induces infringement of a patent shall be liable as an infringer." Contributory infringement is covered by 35 U.S.C. § 271(c). Both induced infringement and contributory infringement require the defendant to know of the patent, and to know that the defendant's actions are either inducing or contributing to another's direct infringement. *See Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S.Ct. 2060, 2067-68 (2011). A party asserting indirect infringement needs to plead sufficient "factual assertions to support the legal conclusion of actual knowledge" and "to support the legal conclusion of specific intent." *Chalumeau Power Systems LLC v. Alcatel-Lucent*, No. 11-1175-RGA, 2012 U.S. Dist. LEXIS 142809, at *1-*2 (D. Del. July 18, 2012).

Further, when pleading a claim of contributory infringement under 35 U.S.C. § 271(c), a plaintiff has an obligation to plead facts that allow a reasonable inference that the components provided by the accused infringer have no substantial non-infringing use. *Bill of Lading*, 681 F.3d at 1337-38.

B. The Court Should Dismiss The Claims Of Indirect Infringement

With respect to induced infringement, iControl has failed to allege facts that show that Zonoff specifically intended anyone else to infringe the patents-in-suit and knew that the alleged direct infringer's acts constituted infringement. *See Pragmatus AV, LLC v. TangoMe, Inc.*, No. 11-1092-LPS-CJB, 2013 U.S. Dist. LEXIS 19075, at *33-35 (D. Del. Feb. 13, 2013) (citing *Bill of Lading*, 681 F.3d at 1339). Here, there are no allegations of fact relating to knowledge that alleged induced acts constituted patent infringement or that Zonoff took affirmative steps with the specific intent to induce another's infringement.

First, there are not sufficient allegations to support the plausible inference that Zonoff had knowledge that anyone's actions constituted infringement of the patents-in-suit. A vague allegation of knowledge of the patents-in-suit does not make it plausible that Zonoff had knowledge of any infringing use. *See, e.g., HSM Portfolio LLC v. Fujitsu Ltd.*, No. 11-770-RGA, 2012 WL 2580547, at *1 (D. Del. July 3, 2012) (finding allegation that purported indirect infringer was "placed on notice of its infringement" as of a particular date insufficient because those allegations of knowledge were otherwise "wholly unsupported by any factual allegations" and finding that an allegation "that the defendant was on notice of a patent as of a certain date is insufficient to provide a factual basis for alleging knowledge").

Second, there are no allegations that Zonoff specifically intended anyone to infringe the patents-in-suit and there is no basis to infer that Zonoff could have specifically intended for someone to continue to infringe the patents-in-suit. *See, e.g., Pragmatus Telecom LLC v. Ford Motor Co.*, No. 12-92-RGA, 2012 WL 2700495, at *1 (D. Del. July 5, 2012) (dismissing an inducement claim where "[s]pecific intent [was] alleged generally," but "[n]o facts [were] alleged from which one could infer that the allegation [wa]s plausible").

Finally, iControl has failed to allege facts plausibly showing that Zonoff knew that the combination for which the Accused products were especially designed were both patented and infringing or that such components had no substantial non-infringing use. *Bill of Lading*, 681 F.3d at 1337-38. The allegations of iControl's Complaint are just as deficient in failing to adequately allege contributory infringement as was the complaint in *Bonutti Skeletal Innovations LLC v. Confirmis, Inc.*, No. 12-1109-GMS, 2013 WL 6040377 at * 2 n. 4 (D. Del. Nov. 14, 2013). While conclusorily setting forth the proposition that "the Accused products . . . lack any substantial non-infringing use" (D.I. 1 at ¶¶ 23, 30, 37, 44, 51 and 58), iControl does not "plead

facts that allow an inference that the components sold or offered for sale have no substantial non-infringing use." *Id.* (emphasis added, quoting *In re Bill of Lading*, 681 F.3d at 1337). Nor does iControl plead facts showing that Zonoff knew that the combination for which its component was especially designed was both patented and infringing. *Id.*, quoting *Stephenson v. Game Show Network, LLC* , 933 F. Supp. 2d 674, 681 (D. Del. 2013).

For all of these reasons, iControl's claims of indirect infringement of the patents-in-suit should be dismissed.

C. The Court Should Dismiss Any Claims Of Joint Infringement

All of the patents-in-suit include method claims, the performance of which would be carried out by multiple parties. Under existing law there can be no direct infringement of method claims unless the defendant performs all steps of the patent claim or performs some steps while the remaining steps are performed by someone within the defendant's "control or direction." *See Muniauction, Inc. v. Thompson Corp.*, 532 F.3d 1318, 1329-30 (Fed. Cir. 2008). Such joint activity does not constitute either inducement of infringement or contributory infringement. *Limelight Networks, Inc. v. Akamai Technologies, Inc.*, 134 S. Ct. 2111, 2118-20 (2014). "Where the complaint implicates a theory of joint infringement, and thus alleges what is known as divided infringement, . . . a plaintiff must allege much more than merely the requirements of Form 18." *Bonutti Skeletal*, 2013 WL 6040377 at *2 n. 4. Rather, "the complaint must also plead facts sufficient to allow the court to reasonably infer that one party exercises 'direction or control' such that performance of every step is attributable to the controlling party." *Id.* The Complaint in this case clearly does not do so. Accordingly, to the extent that iControl is alleging divided infringement of method claims, such claims should be dismissed. *See id.*; *see also EON Corp. IP Holdings LLP v. FLO TV Inc.*, 802 F. Supp. 2d 527, 534-35 (D. Del. 2011); *Aeritas LLC v. Alaska Air Group*, 893 F. Supp. 2d 680, 686 (D. Del. 2012).

D. iControl's Claim For Damages Should Be Stricken

The patentee in an infringement case has the burden of "pleading and proving at trial" that it complied with the requirement of 35 U.S.C. § 287 to mark patented articles that are sold or offered for sale within the United States with the patent number. *Maxwell v. Baker*, 86 F.3d 1098, 1111 (Fed. Cir. 1996); *see also Dunlap v. Schofeld*, 152 U.S. 244, 248 (1894) (in addressing a predecessor marking statute, the Supreme Court held that because patentees have an affirmative duty to comply with the marking statute, "the duty of alleging and the burden of proving [compliance] is upon the plaintiff."). Since iControl has pleaded neither that it marked its articles with the patents-in-suit nor that it provided Zonoff with pre-suit notice of infringement of any of the patents-in-suit, iControl's claim for damages should be stricken. *See Jackson v. Intel Corp.*, No. 09 C 2178, 2009 WL 2851742 (N.D. Ill. Aug. 31, 2009).

E. Even As To The Allegations Of Undivided Direct Infringement, iControl Should Be Required To File A More Definite Complaint

A United States patent, in general terms, includes drawings and a specification. While the drawings graphically depict the structure and operation of the invention, the specification contains a written description of the structure and operation of the invention in detail. The second paragraph of 35 U.S.C. § 112 states that a patent specification "shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention." It is a "bedrock principle" of patent law that it is the claims of a patent that define the invention to which the patentee is entitled the right to exclude. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005).

Central issues in virtually every patent case are infringement and invalidity. It is the claims of a patent that are infringed. Indeed, as noted in 3 *Lipscomb's Walker On Patents*, (3d ed. 1985) § 11.2 at p. 289, "[i]nfringement of a patent is an erroneous phrase; what is infringed is *a claim*, which is *the definition of invention*, and *it is the claim which is the cause of action.*" (citation and quotation marks omitted). For each claim that is alleged to be infringed, a two-step analysis is required. The first step is determining the meaning and scope of the claim; the second step is comparing the properly construed claim to the product, process or method accused of infringing. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 977 (Fed. Cir. 1995), *aff'd*, 116 S. Ct. 1384 (1996). Validity defenses generally focus on whether the conditions for patentability of 35 U.S.C. §§ 102 and 103 are met, and whether the requirements of 35 U.S.C. § 112 are satisfied. Each claim is a separate invention, and an independent validity analysis must be made for each claim in issue. *Shelcore, Inc. v. Durham Industries, Inc.*, 745 F.2d 621, 624 (Fed. Cir. 1984).

At the time it files its answer, a defendant in a patent infringement case must plead every defense it has. *See* Fed. R. Civ. P. 12(b); 35 U.S.C. § 282. An accused infringer cannot reasonably be required to frame such a responsive pleading to an unparticularized complaint involving 6 patents and 221 separate claims. Rule 12(e) of the Federal Rules of Civil Procedure is designed specifically for this type of situation. *See, e.g., J. D. Ferry Co. v. MacBeth Engineering Corp.*, 11 F.R.D. 75, 76 (M.D. Pa. 1951) (Rule 12(e) motion granted requiring plaintiff to specify which of the patent claims had been infringed); *Marvel Slide Fastener Corp. v. Klozo Fastener Corp.*, 80 F. Supp. 366, 367 (S.D.N.Y. 1948) ("the general practice in patent infringement suits has been to require the plaintiff to state which claims of a patent he alleges to have been infringed").

A critical defect in iControl's Complaint, in addition to the deficiencies described in subsections B-D, *supra*, is the failure to identify which of the 221 patent claims are believed to be infringed. The detail desired by Zonoff with respect to the allegation of undivided direct infringement is simply the identity of the patent claims that iControl alleges to be infringed by Zonoff. This detail has to be readily available to iControl if its present Complaint even purports to satisfy Rule 11.[1] Accordingly, the filing of an amended complaint that identifies the claims of each patent that iControl presently asserts to be infringed by Zonoff, will impose no new burden on iControl, will permit Zonoff to respond intelligently to the Complaint, and will expedite rather than delay the case.

A Rule 12(e) motion is not appropriately employed to obtain evidentiary detail. Rather, the applicable standard is whether "a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading". Fed. R. Civ. P. 12(e). In circumstances where there are a multiplicity of claims in the patents-in-suit, but the specific claims are not designated by the complaint, courts "have readily granted defendant's motion for a more definite statement." *Lincoln Labs., Inc. v. Savage Labs., Inc.*, 26 F.R.D. 141, 143 (D. Del. 1960); *see also Taurus IP, LLC v. Ford Motor Co.*, 539 F. Supp. 2d 1122, 1127 (W.D. Wis. 2008). Because it is only the claims of a patent that are infringed, and only the claims asserted to be infringed as to which there is a justiciable case or controversy as to validity, a "[d]efendant should not be required to guess which of the plaintiff's [221 patent

[1] "In the context of patent infringement actions, [the Federal Circuit has] interpreted Rule 11 to require, at a minimum, that an attorney interpret ***the asserted claims*** and compare the accused device with ***those claims*** before filing a claim alleging infringement." *Q-Pharma, Inc. v. Andrew Jergens Co.*, 360 F.3d 1295, 1300-1301 (Fed. Cir. 2004) (citations omitted) (emphasis added).

claims] he is alleged to be infringing when it would be a simple matter for the plaintiff to specify his pleadings in this respect." *Id.* As the Court in *Taurus IP* observed:

> At the very least, a plaintiff's failure to specify which claims it believes are infringed by a defendant's products places an undue burden on the defendant, who must wade through all the claims in a patent and determine which claims might apply to its products to give a complete response. A plaintiff's failure to specify patent claims hinders the defendant's ability to prepare a defense.

539 F. Supp. 2d at 1127 (citation omitted).

iControl will not be able to explain why it is reasonable to require Zonoff to analyze 221 claims to craft a response to the Complaint when the vast majority of those claims will never be in issue. Moreover, iControl will be unable to explain how its position is consistent with Rule 1 of the Federal Rules of Civil Procedure which requires the rules of civil procedure to be "construed and administered to secure the just, speedy, and inexpensive determination of every action." *See* Fed. R. Civ. P. 1.

iControl's position is not bolstered by Form 18 of the Appendix of Forms to the Federal Rules of Civil Procedure. Unlike the Complaint in this action, Form 18 alleges infringement of a single patent. In addition, it contains no indication that multiple claims are at issue. Furthermore, Form 18 presents no claims of indirect patent infringement such as contributory infringement and inducement of infringement -- allegations which are included in the Complaint at issue here. Additionally, although Rule 84 may insulate a plaintiff from a Rule 12(b)(6) motion with respect to certain allegations of undivided direct infringement, it does not purport to circumscribe a court's power and discretion to require a more definite complaint in appropriate circumstances.[2]

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[2] Satisfying Rule 8(a)(2) does not insulate pleadings from well-grounded Rule 12(e) motions since the very purpose of such a motion is to require greater specificity than what is

It is expected that iControl will contend that it need not supply the details of which claims of which patents it alleges Zonoff infringes at this time, but rather may delay providing that information until discovery is underway. There is no good reason, however, why it would be appropriate for iControl to delay disclosing what claims it believes are infringed. Simply stated, there can be no legitimate reason. The paramount issues in a patent infringement action are whether certain asserted claims of the patent have been infringed and whether those claims are valid. As set forth above, Zonoff will be required to analyze each claim to assert proper defenses. If iControl later reveals in discovery that many of the claims of these patents are not even asserted to have been infringed, Zonoff will have needlessly incurred great expense and wasted valuable resources responding to charges of infringement which are non-existent.

The Court should not countenance any suggestion by iControl that liberal federal discovery procedures permit it to force Zonoff to answer in the dark and wait and see what claims are being asserted against it. Any such argument has its origins in an era that pre-dates the current focus on early and voluntary disclosure of information and limitations on expensive discovery heralded by the Civil Justice Reform Act of 1990 ("CJRA"), 28 U.S.C. § 471 *et seq.* The Congressional findings in the CJRA, 28 U.S.C. § 471, note, create a new climate to consider requiring the pleading of the claims believed to be infringed.

Requiring Zonoff to await discovery to learn the identity of the claims in issue would promote, rather than reduce, both delay and expense. Congress, however, has directed each United States district court to formulate a plan to reduce cost and delay, a centerpiece of which requires the "early and ongoing control of the pretrial process through involvement of a judicial

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normally required in that narrow class of cases where the want of specificity precludes the defendant .from properly framing an answer to a legally sufficient complaint. *Clark v. McDonald's Corp.*, 213 F.R.D. 198, 233 (D. N.J. 2003).

officer". 28 U.S.C. § 473(a)(2). In a patent infringement action, requiring a plaintiff to identify which of the 221 claims are potentially in issue is a highly effacious form of early judicial involvement that will clearly reduce both delay and expense. Without knowing which of 221 claims are in issue, not only is it unreasonable to require Zonoff to investigate, analyze and plead defenses applicable to claims not in issue, but neither the parties nor the Court will be able to formulate a discovery plan, assess the amount of time needed for a *Markman* hearing or trial, or discuss the possibilities of settlement in an intelligent fashion. *See* Fed. R. Civ. P. 16 and 26(f). A more definite complaint, identifying the claims of each patent believed to be infringed, should be required.

V. CONCLUSION

For all the foregoing reasons, Zonoff respectfully submits that its motion to dismiss and for a more definite statement of the Complaint should be granted.

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2014, a copy of the foregoing Memorandum In Support Of Zonoff Inc.'s Motion To Dismiss And For A More Definite Statement is being served via Hand Delivery to:

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